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Supreme Court, U.S.
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Docket Number 06-1394

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

MARY S. VANDERWOUDE HILL
and
JAMES J. HILL,
Petitioners

v.

COMMONWEALTH OF VIRGINIA,
Respondent

On Petition for Writ of Certiorari to the Supreme Court of Virginia

PETITION FOR THE REHEARING OF AN ORDER DENYING A PETITION FOR A WRIT OF CERTIORARI

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The Commonwealth of Virginia prosecuted Mary S. Vanderwoude Hill and her husband James J. Hill (the latter dying pending appeal) for the putative "crime" of refusing in the front yard of their home to allow a Virginia Department of Agriculture and Consumer Services ("VDACS") food inspector into a milking parlor and other buildings in the curtilage of their home, and into the home itself, in violation of Va. Code sec. 3.1-388(e), when he had no warrant, whether a traditional criminal search warrant, administrative inspection warrant, or otherwise, for their home or them. The Summons identifies such as a Class I misdemeanor, which under Virginia law carries a punishment of jail up to twelve months. The undisputed reason for the inspector's wanting to inspect is that the Hills make goats' cheese on their farm from their goats which they then transport a short distance to a nearby farmers' market where they sell it to the public on week-ends from spring to fall.

VDACS claims they not only can buy the cheese at the market and inspect it, which power Ms. Hill does not dispute, but that such activity opens her home itself to warrantless inspections under Va. Code sec. 3.1-399, stating the Commissioner shall have free access "at all reasonable hours" to inspect to determine if the Virginia Food Act is being violated. The statute imposes no limits on the numbers of times the inspector may inspect or the numbers of inspectors who may participate. No law required the Hills to have a license, or imposed any detailed regulatory scheme upon them.

The effect of this Honorable Court's denial of certiorari is that government at all levels will be enabled to compel by threat of criminal prosecution warrantless entry into any home in America because the owner made a spoonful of food therein for public sale. Inspectors can tell thousands of ladies standing at the door of their

home, who have baked cakes for a church bake sale, or an African-American woman who occasionally makes dinners of chittlings, collared greens and fried chicken in her kitchen for sale, that they must let the inspector in, and the Fourth Amendment does not help them. The inspector can warn an adolescent girl at the threshold to the most private place in America that she must let him in because she holds girl scout cookies therein for sale.

The inspector can appear without advance notice or warning that he is coming, and indeed he can be accompanied by a deputy sheriff as this inspector was on his first visit to the Hills' farm. The deputy can be armed, and his presence with the inspector can send the message, "You better submit to the inspector. No, he doesn't need a warrant. This is not the America you thought it was. Your submitting will be less painful than the criminal prosecution which will follow if you don't submit." And indeed, he can even, as this inspector did, flagrantly ignore the curtilage, prominently posted "No Trespassing," enter into the curtilage, and then make his demand after warrantless entry therein. He need not stand at the curtilage and demand entry at that point. Thus, there is the insult of warrantless entry into the curtilage coupled with the injury of later prosecution for refusal to allow entries into the buildings.

The inspector can tell an elderly person who makes occasional jams and jellies for sale in the community that he must submit. And since food laws require inspections of toilet and hand washing areas, he can demand entry into those portions of the home. Whether they make goats' cheese, cookies, cakes, jams or chittlings, all small food producers are affected.

The inevitable effect of such a state of the law is that small producers will stop producing, or like the French before the Revolution, go underground to escape the government system, viewing the government no longer as

their protector but as their enemy. As they stop producing, large corporate food producers take up the slack, and ultimately the sole source of food production is large producers who accept warrantless inspections of their factories as the norm. Thus, American consumers increasingly lose face to face contact with the producer of the food they eat.

Further, as food production gets more concentrated into the hands of fewer producers, diversity of food types disappears to the detriment of the palate of consumers. And protection against deleterious food by knowing who made it at what point when and where is lost. Risks of widespread contaminant outbreaks increase because producers no longer produce for a limited number of known consumers, but for vast unknown numbers.

Rush v. Obledo, 756 F.2d 713, 721 (9th Cir. 1985) states,

> A family day care home is a business only when children cared for from other families for compensation are present and at all other times is a private residence. Furthermore, even when the children cared for are present, the provider retains expectations of privacy in those areas to which the day care children are denied access...
>
> Warrantless inspections are permissible in those portions of the provider's home only when the home is being operated as a family day care business.

Like the home owners in Rush, people making food in their home have a right of privacy in the home in areas where they don't make food and when they are not making it. The effect of denial of certiorari will mean that for a person who make the smallest amount of food in his home for sale it ceases virtually at all times from being a private residence. Moments when privacy can be

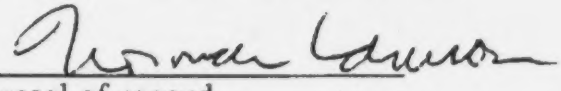
enjoyed cease to exist, for the food inspector gets to pick the moment when he wants to inspect regardless of what the occupant is doing at that time.

Finally, if the Court believes that New York v. Burger, 482 U.S. 691 (1987) applies to private homes, it should so state explicitly at this time. Otherwise, home owners will be left in a quandary and subject to criminal prosecution for relying in good faith on Camara v. Municipal Court, 387 U.S. 523 (1967), which gives them a right to refuse warrantless inspection regardless of commercial use of their homes. And the Court should instruct Virginia that Camara remains the law of the land.

Wherefore, petitioner Mary S. Vanderwoude Hill prays that she be granted rehearing, that the Court grant her a writ of certiorari, and that it reverse and dismiss the conviction.

Respectfully submitted,

MARY S. VANDERWOUDE HILL

By 

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CERTIFICATE OF COUNSEL PURSUANT TO RULE 44.2.

Norman Lamson, counsel for petitioner Mary S. Vanderwoude Hill, hereby certifies, pursuant to Rule 44.2., that the petition for rehearing is restricted to the grounds specified in Rule 44.2., namely, substantial grounds not previously presented (other than intervening circumstances), and is presented in good faith and not for delay.

Norman Lamson

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